

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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WORDLOGIC CORPORATION, a Nevada
corporation,

Plaintiff,

vs.

DOUGLAS A. GLASER, as an individual;
APHENOS CAPITAL, INC., a Florida
corporation; and ADVEDEA, INC., a Florida
corporation,

Defendants.

Case No.: 2:10-cv-01408-RLH-PAL

ORDER

(Second Motion for Temporary
Restraining Order—#9)

Before the Court is Plaintiff Wordlogic Corporation's *ex parte* **Second Motion for Temporary Restraining Order** ("TRO") (#9), filed September 1, 2010.

BACKGROUND

This dispute arises from an alleged breach of contract. Plaintiff alleges the following facts. Plaintiff's business involves research, development, and licensing of software tools for enabling data entry on personal computing devices. (Dkt. #1, Compl.) Defendant Douglas Glaser is a Florida resident who owns two Florida corporations, Aphenos Capital, Inc. and Advidea, Inc. In April 2010, Plaintiff and Glaser signed two consulting agreements. Under the agreements, Glaser was to provide Plaintiff with consulting services that included: building

1 and developing a website and advertisements, writing and producing television infomercials to sell
 2 Plaintiff's products, and other business development services. Plaintiff would then compensate
 3 Glaser with shares of its common stock. Defendants allegedly failed to produce infomercial
 4 content, book certain infomercial air time, or relinquish control of Plaintiff's website. Plaintiff
 5 also alleges that Defendants misappropriated funds for their own personal use and retained stock
 6 certificates that Plaintiff's transfer agent erroneously issued.

7 On August 19, 2010, Plaintiff filed suit against Defendants in this Court alleging:
 8 (1) breach of contract, (2) conversion, (3) fraud, (4) breach of implied covenant of good faith and
 9 fair dealing, and (5) misappropriation. In addition, Plaintiff filed an *ex parte* TRO motion (Dkt.
 10 #2) and a Motion for Preliminary Injunction (Dkt. #3), which is still pending. The Court denied
 11 Plaintiff's TRO motion because Plaintiff failed to demonstrate a likelihood of success on the
 12 merits. (Dkt. #8, Order, Aug. 23, 2010.)

13 On September 1, Plaintiff filed a second *ex parte* TRO motion (Dkt. #9) with newly
 14 obtained evidence that purportedly demonstrates a likelihood of success. The new evidence
 15 includes emails between Plaintiff's corporate president, Frank Evanshen, and Glaser, invoices
 16 from recent sales on Plaintiff's website, and a declaration from Plaintiff's employee, Roy
 17 Spectorman. For the reasons discussed below, the Court denies Plaintiff's motion.

18 DISCUSSION

19 I. TRO Requirements

20 Under Rule 65(b) of the Federal Rules of Civil Procedure, parties seeking a TRO
 21 must establish: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the
 22 absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is
 23 in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008).
 24 Applying *Winter*, the Ninth Circuit has since held that, to the extent previous cases suggested a
 25 lesser standard, "they are no longer controlling, or even viable." *Stormans, Inc. v. Selecky*, 586
 26 F.3d 1109, 1127 (9th Cir. 2009). Thus, a party must satisfy each of these four requirements.

Plaintiff has not satisfied the TRO requirements. First, the Court cannot conclude that Plaintiff has a likelihood of irreparable harm simply because Defendants allegedly have control of Plaintiff's website and stock certificates. If Plaintiff succeeds on its claims, Defendants could receive monetary compensation or declaratory relief, and this weighs heavily against Plaintiff's claim of irreparable harm. *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980) (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974) ("Mere injuries, however substantial, in terms of money, time and energy necessarily expended . . . are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.")) Second, the Court can do no more than infer that Defendants are liable for the alleged misconduct from Plaintiff's new evidence. The emails Plaintiff submits may show a dispute between the parties, but they do not show more than the possibility of misconduct. Thus, Plaintiff has not shown a likelihood of success. Because Plaintiff has not shown a likelihood of success or irreparable harm, the Court need not address the balance of equities or public interest. Accordingly, the Court denies Plaintiff's Motion.

II. Ex Parte Injunctive Relief

While the Court has denied Plaintiff's TRO motion, the Court notes that this motion is Plaintiff's second request for *ex parte* relief, and a motion for preliminary injunction is still pending. The standard for obtaining *ex parte* relief under Rule 65 is very stringent. *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006). The Court will only issue an *ex parte* TRO where it appears there would be an irreparable injury before the responding party can be heard. Fed. R. Civ. P. 65(b)(1)(A). In reality, a TRO is a temporary preliminary injunction issued for a limited period of time until the time when the opposing party has an opportunity to be heard. Rule 65's stringent restrictions "reflect the fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been

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1 granted both sides of a dispute.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck*
2 *Drivers*, 415 U.S. 423, 438–39 (1974).

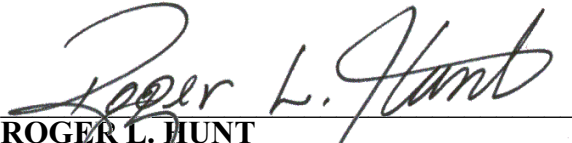
3 The central issue for an *ex parte* TRO motion is whether something needs to be
4 done immediately, before a hearing can be held. Because Plaintiff failed to demonstrate a
5 likelihood of irreparable harm, the Court cannot grant immediate injunctive relief. Although
6 Plaintiff submitted new evidence in support of its second motion, these exhibits do not satisfy the
7 stringent standards for *ex parte* injunctive relief. Defendants are entitled to reasonable notice and
8 an opportunity to be heard. The Court therefore will consider Plaintiff’s motion for preliminary
9 injunction once Plaintiff files proof of service and Defendants are given an opportunity to respond.

10 **CONCLUSION**

11 Accordingly, and for good cause appearing,

12 IT IS HEREBY ORDERED that Plaintiff’s Second Motion for Temporary
13 Restraining Order (#9) is DENIED.

14 Dated: September 7, 2010.

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17 **ROGER L. HUNT**
18 **Chief United States District Judge**
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